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MAY 30 2008

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

FILED

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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAY M. MILES,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, MARIE KIM and DOES 1
TO 100, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441 (FEDERAL
QUESTION JURISDICTION AND
SUPPLEMENTAL JURISDICTION)
BY DEFENDANT CITY AND COUNTY
OF SAN FRANCISCO (28 U.S.C. §§
1441, 1446)**

DEMAND FOR JURY TRIAL

Date Action Filed: January 16, 2008
Trial Date: None Set

1 TO THE CLERK OF THE ABOVE COURT AND TO PLAINTIFF AND HIS COUNSEL
2 OF RECORD: NOTICE IS HEREBY GIVEN that the City and County of San Francisco ("City"),
3 named as a defendant in the above-captioned action, No. 471145 in the files and records of the
4 Superior Court of California for the County of San Francisco, hereby removes said action to the
5 United States District Court for the Northern District of California, pursuant to 28 U.S.C. sections
6 1441 and 1446, and is filing in said Superior Court a Notice of Removal.
7

8 The City, pursuant to 28 U.S.C. §§1441 and 1446, presents the following facts to the Judges
9 of the United States District Court for the Northern District of California:

10 A civil action bearing the above-caption was commenced in the Superior Court of California
11 for the County of San Francisco, as case number 471145, and is pending therein. The complaint was
12 served on the City and County of San Francisco on May 1, 2008. The complaint includes a claim for
13 alleged violation of plaintiff's federal constitutional rights under 42 U.S.C. section 1983 and further
14 includes a claim for alleged violation of plaintiff's federal statutory rights under the Americans With
15 Disabilities Act.
16

17 This action is one that may properly be removed to this Court pursuant to 28 U.S.C. sections
18 1441(a) and (b), because the complaint alleges violation of plaintiff's federal constitutional and
19 statutory rights, and federal question jurisdiction therefore exists.

20 To the extent that plaintiff's complaint alleges a claim or cause of action other than violation
21 of rights under the laws of the United States, supplemental jurisdiction exists, and said causes of
22 action may be removed and adjudicated by this Court pursuant to 28 U.S.C. §1441(c).
23

24 Pursuant to 28 U.S.C. §1446(b), copies of the process, pleadings and other orders served
25 upon the City in this action are attached as Exhibit A. The City's answer is attached as Exhibit B.

26 Defendant Marie Kim has not been served and therefore does not join in this petition.
27
28

1. WHEREFORE, defendant City and County of San Francisco prays that the above action now
2 pending in the Superior Court of California for the County of San Francisco be removed in its
3 entirety to this Court for all further proceedings.

4 **DEMAND FOR JURY TRIAL**

5 The City demands a trial by jury in this action.

6
7
8 Dated: May 29, 2008

9
10 DENNIS J. HERRERA
City Attorney
11 JOANNE HOEPER
Chief Trial Deputy
12 SCOTT D. WIENER
Deputy City Attorney
13

14 By: 

15 SCOTT D. WIENER
Attorneys for Defendant
16 CITY AND COUNTY OF SAN FRANCISCO
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EXHIBIT A

07-03304

**SUMMONS
(CITACION JUDICIAL)**RECEIVED
MAYOR'S OFFICE

08 MAY -1 PM 2:19

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 JAN 16 AM 12:38

BY: _____
DEPUTY CLERK**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**City and County of San Francisco, Marie Kim and Does
1 to 100, inclusive.**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Ray M. Miles

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: Superior Court of San Francisco
(El nombre y dirección de la corte es):
400 McAllister Street

CASE NUMBER: **ENC-08-cv-724145**
(Número de caso)

San Francisco

CA 94114

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory F. Winslow, Esq. 415/621-2131 100495

230 Noe Street
San Francisco

CA 94114

DATE:

JAN 16 2008

(Fecha)

Clerk, by _____

(Secretario)

ELIAS RUIZ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant. **C.C.S.F.**
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☒
- on behalf of (specify):

under: ☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☒ CCP 416.90 (authorized person)

- 4.
- ☒
- by personal delivery on (date):
- 5-1-08**

1 1. At all relevant times the plaintiff, Ray Michael Miles, was a competent adult citizen of
2 the United States residing in the City and County of San Francisco, California.

3 2. The plaintiff is a 49-year-old African-American.

4 3. The plaintiff is mentally disabled with cognitive and psychological impairments the
5 manifestations of which include poor communication skills, disheveled clothing and an unkempt
6 appearance.

7 4. At all relevant times, the plaintiff is, and was "a person with a disability" as this term is
8 used under the laws of the State of California, including, but not limited to, California Government
9 Code §12926 and 12926.1; and of the laws of the United States including, but not limited to, the
10 Americans with Disabilities Act of 1990, 42 U.S.C. §12102(2).

11 5. Defendant City and County of San Francisco (hereinafter referred to as, "CCSF") is a
12 chartered city and county organized and existing under the laws of the State of California.

13 6. At all relevant times, the CCSF owned, operated, managed and controlled a public
14 transportation system commonly known as "The Municipal Railway" (hereinafter referred to as the
15 "MUNI").

16 7. MUNI is a common carrier offering transportation to the public including, but not
17 limited to, transport, services, accommodations, advantages, and facilities to the public on public roads
18 and highways within the City and County of San Francisco for payment of a fare.

19 8. The plaintiff is informed and believes and based upon that information and belief
20 alleges that, at all relevant times, during the conduct alleged herein, MUNI personnel were acting
21 within the scope of their employment for the defendant CCSF and pursuant to CCSF's policies,
22 procedures and practices.

23 9. At all relevant times, the San Francisco Police Department (hereinafter, "SFPD") was
24 an integral part of the CCSF the purpose of which was to provide law enforcement services.

25 10. Plaintiff is informed and believes and based upon that information and belief alleges
26 that at all relevant times, the CCSF employed, directed and assigned police officers to aid and assist
27 MUNI coach operators in the event of a dispute with a passenger.
28

1 11. The plaintiff is informed and believes and based upon that information and belief
2 alleges that, at all relevant times, during the conduct alleged herein, the SFPD officers were acting
3 within the scope of their employment as peace officers for the defendant CCSF and pursuant to CCSF's
4 policies, procedures and practices.

5 12. Defendant Marie Kim (hereinafter referred to as "Kim") is a natural person residing in
6 the State of California.

7 13. At all relevant times, Kim is, and was employed by Defendant City and County of San
8 Francisco as a coach operator for MUNI on the 22-Filmore route.

9 14. The plaintiff is informed and believes and based upon that information and belief
10 alleges that, at all relevant times, during the conduct alleged herein, defendant Kim was acting within
11 the scope of her employment as a coach operator for the defendant CCSF and pursuant to CCSF's
12 policies, procedures and practices.

13 15. Defendants Doe 1 through Doe 100, inclusive, are sued herein under fictitious names.
14 Their true names and capacities are unknown to plaintiff. When their true names and capacities are
15 ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein.
16 Plaintiff is informed and believes and based upon said information and belief alleges that each of the
17 fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and
18 that plaintiff's damages as herein alleged were proximately caused by those defendants. Each reference
19 in this complaint to "defendant," "defendants," or a specifically named defendant refers also to all
20 defendants sued under fictitious names.

21 16. Plaintiff is informed and believes and based upon that information and belief alleges
22 that at all relevant times, Defendants Doe 1 through 25, inclusive, were employees of the CCSF
23 working at MUNI.

24 17. Plaintiff is informed and believes and based upon that information and belief alleges
25 that at all relevant times, Defendants Doe 26 through 50 were employees of the CCSF working at the
26 San Francisco Police Department.

27 ///

28 ///

1 18. At all relevant times, defendants, and each of them, were subject to the provisions of the
2 Fourth and Fourteenth Amendments to the United States Constitution, the federal Americans with
3 Disabilities Act of 1990 42, Title II, U.S.C. §12131, et seq. California Civil Code §§ 51., 51.7, 52.3,
4 54, 54.1 and to all other legal requirements referred to herein.

5 19. Plaintiff is informed and believes and based upon that information and belief alleges
6 that at all relevant times, the CCSF employed and assigned Kim to operate, maintain and control a
7 MUNI motor coach on the "22-Filmore" bus line.

8 20. Plaintiff is informed and believes and based upon that information and belief alleges
9 that at all relevant times, defendant Kim operated a MUNI motor coach on the 22-Filmore line with the
10 express authorization, consent, permission and knowledge of defendants CCSF and Does 1 through 25,
11 inclusive.

12 21. Plaintiff is informed and believes and based upon that information and belief alleges
13 that commencing on or before May 26, 2004, the defendants, and each of them, engaged in a pattern
14 and practice of interfering with, and denying to the plaintiff equal access to public accommodations
15 and transportation services provided by the MUNI coaches Kim was operating, including, but not
16 limited to, the following:

- 17 a. May 26, 2004 at 16th and Mission Streets, San Francisco;
- 18 b. May 28, 2004 at 16th and Church Streets, San Francisco;
- 19 c. May 30, 2004 at 16th and Mission Streets, San Francisco;
- 20 d. January 19, 2006 at Church and Market Streets, San Francisco;
- 21 e. December 12, 2006 at 16th and Mission Streets, San Francisco;
- 22 f. December 29, 2006 at 16th and Mission Streets, San Francisco;
- 23 g. January 2, 2007 at Church and Market Streets, San Francisco;
- 24 h. January 3, 2007 at 16th and Mission Streets, San Francisco;
- 25 i. January 9, 2007 at 16th and Mission Streets, San Francisco;
- 26 j. January 9, 2007 at 16th and Mission Streets, San Francisco;
- 27 k. January 10, 2007 at Church and Market Streets, San Francisco;
- 28 l. January 16, 2007 at 16th and Mission Streets, San Francisco;

- m. January 17, 2007 at 16th and Mission Streets, San Francisco;
- n. March 15, 2007 at 16th and Mission Streets, San Francisco;
- o. March 20, 2007 at 16th and Mission Streets, San Francisco; and
- p. November 30, 2007 at 16th and Mission Streets, San Francisco.

22. During each of these above-described occasions, the plaintiff had attempted to lawfully gain access to a "22-Filmore" MUNI coach operated by defendant Kim, violated no laws, rules or regulations and engaged in no conduct that would justify Kim's interference with the plaintiff's right to equal enjoyment and access to public transportation.

23. In addition to the incidents identified above, on or about ten occasions within the past two years, the plaintiff was prepared to board a 22-Filmore coach, but stopped boarding when he discovered that defendant Kim was operating the coach because he was intimidated by previous interferences with his right to access Kim's coach and feared of public humiliation, personal injury and unlawful imprisonment by MUNI and SFPD personnel should he attempt to access Kim's coach.

24. During each of the above-described incidents, Kim undertook affirmative actions to actively interfere with the plaintiff's rights to equal access to public transportation including, but not limited to:

- a. During two incidents, Kim personally assaulted and battered the plaintiff (May 26, 2004 and January 10, 2007);
- b. During most incidents within the past two years, Kim verbally assaulted and publicly humiliated the plaintiff, by angrily ordering him off the coach using names such as, "stupid" and "asshole" in front of other passengers as she forced him to leave the coach;
- c. During several incidents within the past two years, Kim incited the passengers to verbally attack and physically assault and batter the plaintiff in efforts to force him to leave the coach;
- d. During one incident within the past three years, Kim incited a third-party passenger to assault, threaten, intimidate and force the plaintiff out of the coach;
- e. On both December 29, 2006, and November 11, 2007, notwithstanding the fact that defendants, and each of them, knew that there was no justification or legal right to

1 interfere with the plaintiff's right to full enjoyment and equal access to public
2 transportation, defendant Kim and the SFPD, Officer Does 26 to 50 inclusive, ordered
3 the plaintiff out of Kim's MUNI coach after he had lawfully boarded. The defendants
4 seized and handcuffed the plaintiff, physically removed him from the MUNI coach and
5 forced him to remain outside the coach in handcuffs for an appreciable period of time,
6 in full public view. During these two incidents, Kim and Officer Does 26 to 50,
7 inclusive, acted without probable cause, reasonable suspicion, or any legal justification
8 to assault, batter, detain and imprison the plaintiff. After Kim's coach had departed, the
9 plaintiff was released without charges being filed.

10 f. During most incidents within the past two years, Kim ordered the plaintiff off the bus
11 and took the bus out of service until the plaintiff complied or was forced to comply with
12 her order;

13 g. During one incident, January 9, 2007, Kim failed to stop her coach at a scheduled bus
14 stop when the plaintiff was the only passenger waiting to board.

15 25. Plaintiff is informed and believe and based upon that information and belief alleges that
16 at the time of the above-described events, and at all other pertinent times, the defendants had no
17 warrant for the arrest of the plaintiff or other facts or information that constituted probable cause that
18 plaintiff had ever committed or was about to commit a crime, infraction or MUNI rule violation, so as
19 to provide grounds for interference with his right to full and equal access to public transportation or to
20 support a lawful detention, a lawful physical restraint, a lawful imprisonment or a lawful removal from
21 the coach.

22 26. During the initial part of the above-described incident of November 11, 2007, the
23 plaintiff used a tape-recorder to create an audio record of the incident.

24 27. During the seizure and detention of the plaintiff on November 11, 2007, Officer Does
25 26 to 50, inclusive, took the above-described tape-recorder and the tape creating an audio record of the
26 November 11, 2007 incident.

27 28. At the time the tape-recorder was taken from the plaintiff, the plaintiff informed the
28 police that it contained a record of the incident with defendant Kim.

1 29. Upon the plaintiff's release at the scene following the November 11, 2007 incident, the
2 Officer Does 26 to 50, inclusive, returned the plaintiff's tape-recorder, but without justification or
3 probable cause refused to return the audio tape record to the plaintiff following the incident.

4 30. The plaintiff is informed and believe and based upon that information and belief alleges
5 that the Officer Does 26 to 50, inclusive, seized and refused to return the plaintiff's audio tape record
6 of the incident to control and destroy evidence of their own wrongdoing and the wrongdoing of
7 defendant Kim in order to limit the plaintiff's ability to seek legal redress for the defendants unlawful
8 and unconstitutional conduct.

9 31. Plaintiff is informed and believes and based upon that information and belief alleges
10 that at all relevant times, as a pattern and practice, the CCSF trained, permitted and authorized coach
11 operators, including Kim, to interfere with an individual's right to access public transportation based
12 on the individual's appearance alone without any further legal justification, reason or basis.

13 32. Plaintiff is informed and believes and based upon that information and belief alleges
14 that at all relevant times, as a pattern and practice, the CCSF failed to establish non-discriminatory
15 standards and criteria for coach operators to determine if there is legal cause to justify interference with
16 an individual's right to access public transportation.

17 33. Plaintiff is informed and believes and based upon that information and belief alleges
18 that at all relevant times, as a pattern and practice, MUNI permitted, trained, supported and encouraged
19 individual MUNI coach operators to establish and enforce their own standards and criteria to determine
20 whether there is legal cause to justify the interference with an individual's right to access her coach and
21 that these standards are variable and arbitrary.

22 34. Plaintiff is informed and believes and based upon that information and belief alleges
23 that at all relevant times, based upon her own access standards, defendant Kim arbitrarily denied and
24 continues to deny access to her MUNI coach if she believes that the passenger intends to board the bus
25 without a specific destination.

1 35. Plaintiff is informed and believes and based upon that information and belief alleges
2 that at all relevant times, as a pattern and practice, defendant Kim determines a passenger's eligibility
3 to ride in her coach based upon the passenger's race, communication skills, dress and physical
4 appearance.

5 36. Plaintiff is informed and believes and based upon that information and belief alleges
6 that at all relevant times, defendant Kim interfered with the plaintiff's access to her coach based upon
7 the plaintiff's African American race, poor communication skills, old and disheveled clothing and
8 unkempt appearance.

9 37. Plaintiff is informed and believes and based upon that information and belief alleges
10 that Kim's conduct was motivated by an animosity towards the mentally disabled and African
11 Americans.

12 38. Plaintiff is informed and believes and based upon that information and belief alleges
13 that at all relevant times, defendant Kim and Does 1 through 25, inclusive, were operating, managing,
14 supervising and directing Kim and establishing or failing to establish policies and procedures regarding
15 access to MUNI transportation services.

16 39. The plaintiff is informed and believes and based upon that information and belief
17 alleges that, at all relevant times, it was the official policy, pattern and practice of CCSF that, in the
18 event of a dispute between a MUNI operator and a passenger, the SFPD would offer close support and
19 assistance to MUNI operators.

20 40. The plaintiff is informed and believes and based upon that information and belief
21 alleges that it was the practice, procedure and policy of the CCSF for SFPD police officers to intervene
22 upon request in disputes between a MUNI operator and a passenger. These practices, procedures and
23 policies included, but were not limited to:

24 a. For SFPD officers to intervene on the side of MUNI operators against the passenger
25 regardless of the facts;

26 b. For SFPD officers to accept as fact the statement of the MUNI operator without
27 investigation and to thereafter arrest and imprison the passenger based upon the MUNI
28 operator's statement;

- c. For SFPD officers to be unreasonably and excessively aggressive with the use of force, arrest and imprisonment against passengers;
- d. For SFPD officers to unfairly and inaccurately report the incident so as to exonerate the MUNI operator and blame the passenger for any dispute.
- e. For SFPD officers to seize and suppress evidence regarding the incident that is perceived as possibly unfavorable to the MUNI operator and/or the CCSF;
- f. For SFPD officers to intentionally fail to interview witnesses perceived to be favorable to the passenger.

41. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times that the CCSF knew of the above-described practice and permitted, ratified and sanctioned the practice by failing to act to stop the practice and by not punishing those CCSF employees engaged in the practices.

42. Plaintiff is informed and believes and based upon that information and belief alleges that the conduct of the SFPD was motivated by the policy and practice to assist MUNI operators, as alleged above.

43. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, the defendants, and each of them, knew that disabled individuals rely upon MUNI's public transportation system.

44. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, the defendants, and each of them, knew that poor communication skills, old and disheveled clothing and an unkempt appearance are often manifestations of a mental disability.

45. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, CCSF knew that the plaintiff was mentally disabled by virtue of a determination of disability by the CCSF Human Services Agency and payment of assistance to the plaintiff from the CCSF since 2003. CCSF was further aware of the plaintiff's disability when it accepted reimbursement of the money it paid to the plaintiff by the Social Security Administration based upon its June 30, 2007 retro-active determination of back to August 1, 2003.

1 46. Plaintiff is informed and believes and based upon that information and belief alleges
2 that defendant CCSF knew that Kim was interfering with the plaintiff's right to equal access to public
3 transportation because the plaintiff reported this fact to MUNI "Supervisors", including Does 1 to 25,
4 inclusive on May 29, 2004, May 30, 2004, December 29, 2006, January 9, 2007 and January 17, 2007.

5 47. Plaintiff is informed and believes and based upon that information and belief alleges
6 that it was the responsibility of the MUNI Supervisors including Does 1 to 25, inclusive, to investigate
7 and adjudicate disputes between passengers and coach operators.

8 48. Plaintiff is informed and believes and based upon that information and belief alleges
9 that, during the above-alleged incidents, MUNI Supervisors investigated the circumstances and
10 determined that Kim's interference with the plaintiff's right to transportation was appropriate and
11 ratified, approved and condoned Kim's conduct towards the plaintiff.

12 49. Plaintiff is informed and believes and based upon that information and belief alleges
13 that CCSF knew of Kim's above-described pattern and practice and permitted, ratified, encouraged,
14 condoned, supported and adopted Kim's actions to interfere with the plaintiff's right to access public
15 transportation.

16 50. Plaintiff is informed and believes and based upon that information and belief alleges
17 that defendant CCSF failed to establish a nondiscriminatory criteria, policy, practice and procedure for
18 mentally disabled access to MUNI transportation.

19 51. As a direct, proximate and legal result of the discriminatory conduct of the defendants,
20 to interfere with the plaintiff's access to public transportation and accommodations, the plaintiff was
21 caused to suffer a deprivation of the right to equal protection under the law and a deprivation of the
22 rights, privileges and immunities accorded to the plaintiff under the Fourteenth Amendment to the
23 United States Constitution.

24 52. As a direct, proximate and legal result of the defendants conduct to seize, restrain,
25 search and detain the plaintiff and to seize the plaintiff and his audio tape record during the incidents of
26 December 29, 2006 and November 27, 2007, respectively; the plaintiff was caused to suffer a
27 deprivation of the right to be free from search and seizure without probable cause under the Fourth
28 Amendment to the United States Constitution.

1 53. As a direct, proximate and legal result of the conduct of the defendants to interfere with
2 the plaintiff's right to equal access to public transportation on the basis of his race and mental
3 disability, the plaintiff was caused to suffer a loss of rights guaranteed to him under the Americans with
4 Disabilities Act of 1990, Title II, 42 U.S.C. §12131-12150 "Prohibition against Discrimination in
5 Public Transportation."

6 54. As a direct and proximate result of the acts and omissions of the defendants, and each of
7 them, over the past two years, the plaintiff was caused to suffer and continues to suffer, psychological
8 trauma and shock, humiliation and embarrassment, extreme mental and emotional distress.

9 55. As a further direct and proximate result of the acts and omissions of the defendants, and
10 each of them, over the past two years, the plaintiff was caused to suffer fear of harmful or offensive
11 physical contact and suffered such harmful and offensive physical contact resulting in personal injury.

12 56. As a further direct and proximate result of the acts and omissions of the defendants, and
13 each of them, over the past two years, the plaintiff employed and will continue to employ medical
14 providers in the future and caused the plaintiff to incur medical fees and expenses in the past and he
15 will continue to incur medical fees and expenses in the future.

16 57. As a further direct and proximate result of the acts and omissions of the defendants, and
17 each of them, over the past two years, the plaintiff was caused to suffer great inconvenience, loss of
18 time and loss of effort.

19 58. As a further direct and proximate result of the acts and omissions of the defendants, and
20 each of them, over the past two years, the plaintiff was caused to employ and continue to employ
21 attorneys and to incur fees and expenses in order to protect and vindicate his legal rights.

22 59. As a further direct and proximate result of the acts and omissions of the defendants, and
23 each of them, the plaintiff was caused to suffer the loss of an audio cassette with a record of the
24 incident of November 11, 2007.

25 60. As alleged above, defendants' persistent and intentional interference with the plaintiff's
26 right of access to public transportation over the past two years based solely upon his race and disability
27 was despicable and demonstrated an intent to injure the plaintiff such as to constitute malice and to
28 justify the award of exemplary and punitive damages against non-public entity defendants.

1 61. As alleged above, defendants' conduct over the past two years toward the plaintiff was
2 carried out with a willful and conscious disregard for the law and the rights of the plaintiff and of other
3 mentally disabled persons and was oppressive in that such conduct subjected the plaintiff to cruel and
4 unjust hardship in conscious disregard for the law and plaintiff's rights and justifies the award of
5 exemplary and punitive damages against non-public entities under California Civil Code §3294.

6 62. As a result of the defendants' intentional interference with the plaintiff's right to equal
7 access to MUNI transportation over the past two years, the plaintiff has continually been denied his
8 rights to full and equal enjoyment of public transportation. It has been and will continue to be a futile
9 gesture on the part of the plaintiff to attempt to gain access to coaches operated by defendant Kim or to
10 complain to the CCSF.

11 63. The acts and omissions of the defendants over the past two years, as alleged herein,
12 interfere with the plaintiff's right to access public transportation and fail to establish a
13 nondiscriminatory criteria, policy practice and procedure for providing access to MUNI transportation
14 to the mentally disabled. These acts and omissions are continuing on a day-to-day basis and have the
15 continuing effect of wrongfully and willfully excluding the plaintiff and other members of the public
16 who are mentally disabled from full and equal enjoyment and access to MUNI transportation as
17 hereinabove described. Such acts and omissions are the continuing cause of humiliation, severe mental
18 and emotional suffering, assault, battery and false imprisonment as the defendants continue to treat the
19 plaintiff as inferior and discriminate against him on the basis that he is mentally disabled and an
20 African American.

21 64. The plaintiff is unable so long as such acts and omissions of the defendants continue, to
22 achieve full and equal enjoyment and access to MUNI transportation services as described above. The
23 acts of the defendants, and each of them, have proximately caused and will continue to cause
24 irreparable injury to the plaintiff if not enjoined by this court.

25 65. Wherefore, the plaintiff asks this court to preliminarily and permanently:

- 26 a. Enjoin any continuing interference with the rights of the plaintiff and those similarly
27 situated to equal enjoyment and access to MUNI transportation services;
28

- 1 b. Require the defendants to comply forthwith with the applicable constitutional and
2 statutory requirements relating to full and equal enjoyment and access to public
3 transportation as described above; and
4 c. Require that CCSF adopt a rational, nondiscriminatory standards and criteria for
5 determining when and if interference with a persons right to access public transportation
6 is justified.

7 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.
8

9 **SECOND CAUSE OF ACTION**
10 (Americans with Disabilities Act, 42 U.S.C. §12101, et seq.)

11 As and for a Second Cause of Action, plaintiff alleges against the defendants, and each of them:

12 66. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through
13 65, inclusive, as though set forth fully herein.

14 67. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12131, et seq.
15 prohibits interference with an individuals right to full enjoyment and access to public transportation on
16 the basis of race or disability.

17 68. As a direct, legal and proximate result of the conduct of the defendants, and each of
18 them, the plaintiff was caused to suffer the loss of rights as guaranteed by Title II of the Americans
19 with Disabilities Act of 1990, 42 U.S.C. §§12132, entitling the plaintiff to damages, punitive damages,
20 injunctive relief and attorney fees.

21 69. As a direct, legal and proximate result of the conduct of the defendants, and each of
22 them, over the past two years, the plaintiff was caused to suffer the damages as described above.

23 70. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the
24 defendants, and each of them, as requested above.

25 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.
26 ///

THIRD CAUSE OF ACTION
(Unruh Civil Right Act, Cal. Civil Code §51)

As and for a Third Cause of Action, plaintiff alleges against the defendants, and each of them:

71. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

72. Plaintiff is informed and believes and based upon that information and belief alleges that MUNI is a "business establishment" as that term is used in California Civil Code §51(b).

73. As a direct, legal and proximate result of the above-alleged conduct of the defendants, and each of them, over the past two years, the plaintiff was deprived of full and equal accommodations, advantages, facilities, privileges and services provided by MUNI in violation of the Unruh Civil Rights Act, California Civil Code §51(b).

74. The conduct of the defendants, and each of them, as alleged herein constituted a violation of the right of an individual under the Americans with Disabilities Act of 1990 (California Civil Code §51(f)) in violation of California Civil Code §51(b).

75. By virtue of the defendants' conduct in denying, aiding and inciting the denial of the plaintiff's rights and discriminating in violation of California Civil Code §51, the plaintiff is entitled to treble the amount of actual damages, but in no case less than four thousand dollars (\$4,000) and attorney fees.

76. As a direct, legal and proximate result of the conduct of the defendants, and each of them, over the past two years, the plaintiff was caused to suffer the damages as described above.

77. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §52.1.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

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FOURTH CAUSE OF ACTION

(Cal. Civil Code §51.7, Freedom from Violence or Intimidation)

As and for a Fourth Cause of Action, plaintiff alleges against the defendants, and each of them:

78. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

79. At all relevant times, California Civil Code §51.7 was in full force and effect and established the plaintiff's right to be free from violence and intimidation by threat of violence against him because of his race and disability.

80. The conduct of the defendant defendants, and each of them, as alleged above over the past three years, violated the plaintiff's rights pursuant of California Civil Code §51.7(a).

81. By virtue of the defendants' conduct in denying, aiding and inciting the denial of the plaintiff's rights and discriminating in violation of California Civil Code §51.7, the plaintiff is entitled to punitive damages, a civil penalty of twenty-five thousand dollars (\$25,000) for each violation and attorney fees.

82. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §52.1.

83. As a direct, legal and proximate result of the conduct of the defendants, and each of them, the plaintiff was caused to suffer the damages as described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

FIFTH CAUSE OF ACTION

(Disabled Person Act, Cal. Civil Code §54, §54.1)
(Right to access public facilities and transportation)

As and for a Fifth Cause of Action, plaintiff alleges against the defendants, and each of them:

84. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

85. The Disabled Person Act, Civil Code §§ 54 and 54.1, establish the plaintiff's rights to full and free access to public facilities and public transportation, respectively.

86. The conduct of the defendants, and each of them, as alleged herein constituted a violation of the right of an individual under the Americans with Disabilities Act of 1990 in violation of California Civil Code §54(c) and §54.1(a)(3).

87. The above-alleged conduct of the defendants, and each of them, constituted an interference with, and denial of, the plaintiff's full and free use of streets and public transportation facilities in violation of California Civil Code §54.

88. The above-alleged conduct of the defendants, and each of them, constituted an interference with, and denial of, the plaintiff's full and equal access, as enjoyed by other members of the general public, to MUNI's accommodations, advantages, facilities and privileges of all common carriers and other public conveyances in violation of California Civil Code §54.1.

89. By virtue of the defendants' conduct in denying and interfering with admittance to and enjoyment of the public MUNI transportation facilities in violation of California Civil Code §54.1, the plaintiff is entitled to up to a maximum of three times the amount of his actual damages, but in no case less than one thousand dollars (\$1,000) and attorney fees.

90. As a direct, legal and proximate result of the conduct of the defendants, and each of them, the plaintiff was caused to suffer the damages as described above.

91. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §54.3.

'WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

SIXTH CAUSE OF ACTION (Assault) :

As and for a Sixth Cause of Action, plaintiff alleges against the defendants, and each of them:

92. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

93. On June 28, 2007, filed a "Claim against the City and County of San Francisco" and a First Amended Claim Against the City and County of San Francisco" and, in so doing, the plaintiff complied with the claim requirements of Government Code §§910, et seq. with regard to non-constitutional state law claims arising out of the December 29, 2007 incident, as alleged below (Causes

1 of Action Six through Eleven, herein); said First Amended Claim was rejected in a writing dated July
2 16, 2007.

3 94. Notwithstanding the fact that defendants, and each of them, knew that Kim had no
4 justification or legal right to order the plaintiff to leave her coach, on December 29, 2006 Kim and
5 Officer Does 26 to 50 inclusive, intentionally placed the plaintiff in fear of harmful and offensive
6 physical contact with his person for the purpose of unlawfully forcing him to leave the coach.

7 95. As a direct, legal and proximate result of the conduct of the defendants, and each of
8 them, the plaintiff was placed in apprehension of harmful and offensive physical contact with his
9 person.

10 96. The plaintiff did not consent to the above-described assault.

11 97. As a direct, legal and proximate result of the conduct of the defendants, occurring on
12 December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional
13 and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

14 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

15
16 **SEVENTH CAUSE OF ACTION**
17 **(Battery)**

18 As and for a Seventh Cause of Action, plaintiff alleges against the defendants, and each of
19 them:

20 98. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through
21 65, inclusive, as though set forth fully herein.

22 99. On December 29, 2006, Defendant Kim and Officer Does 26 to 50, inclusive, intended
23 to make harmful and offensive contact with the plaintiff for the purpose of unlawfully removing him
24 from defendant Kim's MUNI coach and interfering with his right to access public transportation.

25 100. The plaintiff did not consent to the above-described battery.

26 101. As a direct, legal and proximate result of the conduct of the defendants, and each of
27 them, the plaintiff suffered harmful and offensive physical contact with his person.
28

102. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

EIGHTH CAUSE OF ACTION
(False Imprisonment)

As and for a Eighth Cause of Action, plaintiff alleges against the defendants, and each of them:

103. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

104. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer a loss of personal freedom of movement, personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

NINTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

As and for a Ninth Cause of Action, plaintiff alleges against the defendants, and each of them:

105. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

106. In undertaking the actions alleged above, the defendants, and each of them, intended to humiliate, embarrass, make and example of, intimidate and otherwise cause the plaintiff severe mental and emotional distress.

107. In authorizing, permitting, ratifying, encouraging and condoning Kim's conduct, as alleged above, the City and County of San Francisco either intended to harm the plaintiff or acted with callous indifference to the harm caused to the plaintiff by violation of his rights by the defendants.

108. The above-described acts of the defendants, and each of them, were outrageous, intentional, unlawful, reckless, malicious and despicable and were committed for the purpose of causing the plaintiff to suffer pain, humiliation, mental anguish, and emotional and physical distress.

109. The conduct of each of these defendants in authorizing, confirming and ratifying these actions were done with the knowledge that the plaintiff's emotional and physical distress would thereby increase, and was committed with a wanton and reckless disregard for the consequences to the plaintiff and constituted malice and oppression. As a result therefore, the plaintiffs are entitled to an award of punitive damages against the non-public entity defendants pursuant to Civil Code §3294.

110. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

TENTH CAUSE OF ACTION (Negligence)

As and for a Tenth Cause of Action, plaintiff alleges against the defendants, and each of them:

111. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

112. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times defendant Kim was unqualified, unskilled and unfit for employment as a MUNI coach operator.

113. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times, defendant CCSF knew, or in the exercise of reasonable diligence should have known, that Kim was unqualified, unskilled and unfit for employment as a MUNI coach operator and that she and Officer Does 25 to 50, inclusive, were violating the rights of the plaintiff and other individuals similarly situated.

114. Notwithstanding its knowledge of the ongoing unlawful conduct by the defendants, and each of them, and of Kim's lack of fitness, skill and qualification for employment as an operator of a MUNI coach defendant CCSF negligently:

- a. Employed Kim;
- b. Failed to supervise, train or discipline Kim;
- c. Failed to act to stop Kim's ongoing unlawful conduct;

- d. Failed to supervise, train or discipline officers of the San Francisco Police Department, and in particular, Officer Does 26 to 50, inclusive;
- e. Failed to investigate the complaints of the plaintiff and others regarding unlawful discrimination by coach operators and the SFPD against certain classes of passengers including, but not limited to the disabled, African Americans and, in particular, African Americans with a mental disability;
- f. Failed to establish lawful and rational policies and procedures to establish non-discriminatory, non-arbitrary standards and criteria to be used by MUNI operators and SFPD officers when disputes arise between members of the public and coach operators over the issue of access to public transportation.

115. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

ELEVENTH CAUSE OF ACTION (Negligent Infliction of Emotional Distress)

As and for a Eleventh Cause of Action, plaintiff alleges against the defendants, and each of them:

116. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, 111 through 114, inclusive, as though set forth fully herein.

117. Defendants, and each of them, knew or, in the exercise of reasonable diligence, should have known, that their failure to exercise due care in providing transportation to members of the public, including the disabled and the plaintiff, would cause the plaintiff to suffer severe emotional distress.

118. As a direct, legal and proximate result of the conduct of the defendants, occurring December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

PRAYER FOR RELIEF

WHEREFORE plaintiff, Ray Michael Miles, prays for judgment against defendants, and each of them, as follows:

First Cause of Action: Civil Rights Violation 42 U.S.C. §1983

1. For non-economic damages;
2. For economic damages;
3. For exemplary and punitive damages against defendant Marie Kim, only;
4. For costs of suit herein and attorney fees (42 U.S.C. §1988);
5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation;
6. For pre-judgment interest in an amount to be calculated at a later date;
7. For other and further relief as the court may deem just and proper.

Second Cause of Action: Americans with Disabilities Act 42 U.S.C. §12101, et seq.

1. For non-economic damages;
2. For economic damages;
3. For exemplary and punitive damages against defendant Marie Kim, only;
4. For costs of suit herein and attorney fees pursuant to 29 U.S.C. §794(b);
5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation;
6. For pre-judgment interest in an amount to be calculated at a later date;
7. For other and further relief as the court may deem just and proper.

Third Cause of Action

1. For non-economic compensatory damages;
2. For economic damages;
3. Treble damages pursuant to Civil Code §52;
4. For costs of suit herein and attorney fees pursuant to Civil Code §52(a);
5. For exemplary and punitive damages against defendant Marie Kim, only;
6. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation;
7. For pre-judgment interest in an amount to be calculated at a later date;
8. For other and further relief as the court may deem just and proper.

Fourth Cause of Action

1. For non-economic damages;
2. For economic damages;
3. For a civil penalty in the amount of \$25,000 for each and every incident in which the defendants violated the plaintiff's rights under California Civil Code §51.7 pursuant to Civil Code §52(b)(2);
4. For costs of suit herein and attorney fees pursuant to Civil Code §52(b)(3);
5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation pursuant to Civil Code §52.1;
6. For exemplary and punitive damages against defendant Marie Kim, only pursuant to Civil Code §52(b)(1);
7. For pre-judgment interest in an amount to be calculated at a later date;

8. For other and further relief as the court may deem just and proper.

Fifth Cause of Action

1. For non-economic damages;
2. For economic damages;
3. For treble damages in no case less than \$1,000 for each and every incident in which the defendants violated the plaintiff's rights under Civil Code §54 and §54.1 pursuant to Civil Code §54.3;
4. For costs of suit herein and attorney fees pursuant to Civil Code §54.3;
5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation; pursuant to Civil Code §55;
6. For exemplary and punitive damages against defendant Marie Kim, only pursuant to Civil Code §3294;
7. For pre-judgment interest in an amount to be calculated at a later date;
8. For other and further relief as the court may deem just and proper.

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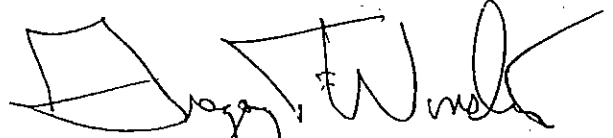
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Sixth through Eleventh Causes of Action

1. For non-economic damages;
2. For economic damages;
3. For costs of suit herein;
4. For exemplary and punitive damages against defendant Marie Kim pursuant to Civil Code §3294, only;
5. For pre-judgment interest in an amount to be calculated at a later date;
6. For other and further relief as the court may deem just and proper.

DATE: January 16, 2008

WINSLOW & HURTUBISE



By Gregory Winslow
Attorneys for Plaintiffs

Alternative Dispute Resolution (ADR) Program Information Package

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 201.9(c))

**Superior Court of California
County of San Francisco**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- ***ADR can save time.*** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ***ADR can save money.*** Court costs, attorneys fees, and expert fees can be saved.
- ***ADR can be cooperative.*** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ***ADR can reduce stress.*** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- ***ADR encourages participation.*** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ***ADR is flexible.*** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ***ADR can be more satisfying.*** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 provides **three different voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfgov.org/courts. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Cost

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

Case No. _____

Plaintiff

v.

Defendant

**STIPULATION TO ALTERNATIVE
DISPUTE RESOLUTION**

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|---|---|---|
| <input type="checkbox"/> Private Mediation | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration | | Judge _____ |
| <input type="checkbox"/> Non-binding judicial arbitration | | Judge _____ |
| <input type="checkbox"/> BASF Early Settlement Program | | |
| <input type="checkbox"/> Other ADR process (describe) _____ | | |

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY				
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____					
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____					
<table style="width: 100%;"> <tr> <th colspan="2" style="text-align: center;">CASE MANAGEMENT STATEMENT</th> </tr> <tr> <td style="width: 50%;"> (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) </td> <td style="width: 50%;"> <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) </td> </tr> </table>		CASE MANAGEMENT STATEMENT		(Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)	<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)
CASE MANAGEMENT STATEMENT					
(Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)	<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)				
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____					

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):

3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):

4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):



Superior Court of California County of San Francisco

HON. DAVID BALLATI
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati
The Honorable Anne Bouliane
The Honorable Ellen Chaitin
The Honorable Robert L. Dondero
The Honorable Ernest H. Goldsmith
The Honorable Harold E. Kahn
The Honorable Patrick J. Mahoney
The Honorable Tomar Mason

The Honorable James J. McBride
The Honorable Kevin M. McCarthy
The Honorable John E. Munter
The Honorable Ronald Quidachay
The Honorable A. James Robertson, II
The Honorable John K. Stewart
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3876

SUMMONS
(CITACION JUDICIAL)RECEIVED
MAYOR'S OFFICE

08 MAY -1 PM 2:19

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 JAN 16 AM 12:38

CORDELL PARK - LL. CLERK

BY: _____
DEPUTY CLERK**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):City and County of San Francisco, Marie Kim and Does
1 to 100, inclusive.**YOU ARE BEING SUED BY PLAINTIFF:**
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Ray M. Miles

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: Superior Court of San Francisco
(El nombre y dirección de la corte es):
400 McAllister Street

CASE NUMBER: **08cv00074-145**
(Número de caso)

San Francisco CA 94114

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory F. Winslow, Esq. 415/621-2131 100495
230 Noe Street
San Francisco CA 94114

DATE: JAN 16 2008
(Fecha)Clerk, by _____, Deputy
(Secretario) **ELIAS BUTT (Adjunto)**

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant. **MARIE Kim**
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☐
- on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- 4.
- ☒
- by personal delivery on (date):
- 5-1-08**

WINSLOW & HURTUBISE
Gregory F. Winslow (100495)
Jerry A. Hurtubise (95180)
230 Noe Street
San Francisco, CA 94114
Telephone (415) 621-2131

ENJOINED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 JAN 16 AM 12:38

CASE MANAGEMENT CONFERENCE SET

Attorneys for Plaintiff, Ray M. Miles

CORRECTIONAL CLERK

BY: [Signature]
DEPUTY CLERK

JUN 20 2008 9:00 AM

DEPARTMENT 212

SUPERIOR COURT, STATE OF CALIFORNIA,
UNLIMITED JURISDICTION
CITY AND COUNTY OF SAN FRANCISCO

RAY M. MILES,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
MARIE KIM and DOES 1 TO 100, inclusive,

Defendants.

No. CV014528

000-83-471145

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

1. Civil Rights (42 U.S.C. §§1983, 1988)
2. ADA, Title II, 42 U.S.C. §§12131, et seq.
3. Unruh Civil Rights Act (CC §51)
4. Violence and Intimidation (CC §51.7)
5. Disabled Persons Act (CC §§54, 54.1)
6. Assault
7. Battery
8. False Imprisonment
9. Intentional Infliction of Emotional Distress
10. Negligence
11. Negligent Infliction of Emotional Distress

FIRST CAUSE OF ACTION
(Civil Rights 42 U.S.C. §1983)

As and for a First Cause of Action, the plaintiff RAY MICHAEL MILES alleges against
defendants CITY AND COUNTY OF SAN FRANCISCO, MARIE KIM and Does 1 through 100,
inclusive:

1 1. At all relevant times the plaintiff, Ray Michael Miles, was a competent adult citizen of
2 the United States residing in the City and County of San Francisco, California.

3 2. The plaintiff is a 49-year-old African-American.

4 3. The plaintiff is mentally disabled with cognitive and psychological impairments the
5 manifestations of which include poor communication skills, disheveled clothing and an unkempt
6 appearance.

7 4. At all relevant times, the plaintiff is, and was "a person with a disability" as this term is
8 used under the laws of the State of California, including, but not limited to, California Government
9 Code §12926 and 12926.1; and of the laws of the United States including, but not limited to, the
10 Americans with Disabilities Act of 1990, 42 U.S.C. §12102(2).

11 5. Defendant City and County of San Francisco (hereinafter referred to as, "CCSF") is a
12 chartered city and county organized and existing under the laws of the State of California.

13 6. At all relevant times, the CCSF owned, operated, managed and controlled a public
14 transportation system commonly known as "The Municipal Railway" (hereinafter referred to as the
15 "MUNI").

16 7. MUNI is a common carrier offering transportation to the public including, but not
17 limited to, transport, services, accommodations, advantages, and facilities to the public on public roads
18 and highways within the City and County of San Francisco for payment of a fare.

19 8. The plaintiff is informed and believes and based upon that information and belief
20 alleges that, at all relevant times, during the conduct alleged herein, MUNI personnel were acting
21 within the scope of their employment for the defendant CCSF and pursuant to CCSF's policies,
22 procedures and practices.

23 9. At all relevant times, the San Francisco Police Department (hereinafter, "SFPD") was
24 an integral part of the CCSF the purpose of which was to provide law enforcement services.

25 10. Plaintiff is informed and believes and based upon that information and belief alleges
26 that at all relevant times, the CCSF employed, directed and assigned police officers to aid and assist
27 MUNI coach operators in the event of a dispute with a passenger.
28

1 11. The plaintiff is informed and believes and based upon that information and belief
2 alleges that, at all relevant times, during the conduct alleged herein, the SFPD officers were acting
3 within the scope of their employment as peace officers for the defendant CCSF and pursuant to CCSF's
4 policies, procedures and practices.

5 12. Defendant Marie Kim (hereinafter referred to as "Kim") is a natural person residing in
6 the State of California.

7 13. At all relevant times, Kim is, and was employed by Defendant City and County of San
8 Francisco as a coach operator for MUNI on the 22-Filmore route.

9 14. The plaintiff is informed and believes and based upon that information and belief
10 alleges that, at all relevant times, during the conduct alleged herein, defendant Kim was acting within
11 the scope of her employment as a coach operator for the defendant CCSF and pursuant to CCSF's
12 policies, procedures and practices.

13 15. Defendants Doe 1 through Doe 100, inclusive, are sued herein under fictitious names.
14 Their true names and capacities are unknown to plaintiff. When their true names and capacities are
15 ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein.
16 Plaintiff is informed and believes and based upon said information and belief alleges that each of the
17 fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and
18 that plaintiff's damages as herein alleged were proximately caused by those defendants. Each reference
19 in this complaint to "defendant," "defendants," or a specifically named defendant refers also to all
20 defendants sued under fictitious names.

21 16. Plaintiff is informed and believes and based upon that information and belief alleges
22 that at all relevant times, Defendants Doe 1 through 25, inclusive, were employees of the CCSF
23 working at MUNI.

24 17. Plaintiff is informed and believes and based upon that information and belief alleges
25 that at all relevant times, Defendants Doe 26 through 50 were employees of the CCSF working at the
26 San Francisco Police Department.

27 ///

28 ///

18. At all relevant times, defendants, and each of them, were subject to the provisions of the Fourth and Fourteenth Amendments to the United States Constitution, the federal Americans with Disabilities Act of 1990 42, Title II, U.S.C. §12131, et seq. California Civil Code §§ 51., 51.7, 52.3, 54, 54.1 and to all other legal requirements referred to herein.

19. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times, the CCSF employed and assigned Kim to operate, maintain and control a MUNI motor coach on the "22-Filmore" bus line.

20. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times, defendant Kim operated a MUNI motor coach on the 22-Filmore line with the express authorization, consent, permission and knowledge of defendants CCSF and Does 1 through 25, inclusive.

21. Plaintiff is informed and believes and based upon that information and belief alleges that commencing on or before May 26, 2004, the defendants, and each of them, engaged in a pattern and practice of interfering with, and denying to the plaintiff equal access to public accommodations and transportation services provided by the MUNI coaches Kim was operating, including, but not limited to, the following:

- a. May 26, 2004 at 16th and Mission Streets, San Francisco;
- b. May 28, 2004 at 16th and Church Streets, San Francisco;
- c. May 30, 2004 at 16th and Mission Streets, San Francisco;
- d. January 19, 2006 at Church and Market Streets, San Francisco;
- e. December 12, 2006 at 16th and Mission Streets, San Francisco;
- f. December 29, 2006 at 16th and Mission Streets, San Francisco;
- g. January 2, 2007 at Church and Market Streets, San Francisco;
- h. January 3, 2007 at 16th and Mission Streets, San Francisco;
- i. January 9, 2007 at 16th and Mission Streets, San Francisco;
- j. January 9, 2007 at 16th and Mission Streets, San Francisco;
- k. January 10, 2007 at Church and Market Streets, San Francisco;
- l. January 16, 2007 at 16th and Mission Streets, San Francisco;

- m. January 17, 2007 at 16th and Mission Streets, San Francisco;
- n. March 15, 2007 at 16th and Mission Streets, San Francisco;
- o. March 20, 2007 at 16th and Mission Streets, San Francisco; and
- p. November 30, 2007 at 16th and Mission Streets, San Francisco.

22. During each of these above-described occasions, the plaintiff had attempted to lawfully gain access to a "22-Filmore" MUNI coach operated by defendant Kim, violated no laws, rules or regulations and engaged in no conduct that would justify Kim's interference with the plaintiff's right to equal enjoyment and access to public transportation.

23. In addition to the incidents identified above, on or about ten occasions within the past two years, the plaintiff was prepared to board a 22-Filmore coach, but stopped boarding when he discovered that defendant Kim was operating the coach because he was intimidated by previous interferences with his right to access Kim's coach and feared of public humiliation, personal injury and unlawful imprisonment by MUNI and SFPD personnel should he attempt to access Kim's coach.

24. During each of the above-described incidents, Kim undertook affirmative actions to actively interfere with the plaintiff's rights to equal access to public transportation including, but not limited to:

- a. During two incidents, Kim personally assaulted and battered the plaintiff (May 26, 2004 and January 10, 2007);
- b. During most incidents within the past two years, Kim verbally assaulted and publicly humiliated the plaintiff, by angrily ordering him off the coach using names such as, "stupid" and "asshole" in front of other passengers as she forced him to leave the coach;
- c. During several incidents within the past two years, Kim incited the passengers to verbally attack and physically assault and batter the plaintiff in efforts to force him to leave the coach;
- d. During one incident within the past three years, Kim incited a third-party passenger to assault, threaten, intimidate and force the plaintiff out of the coach;
- e. On both December 29, 2006, and November 11, 2007, notwithstanding the fact that defendants, and each of them, knew that there was no justification or legal right to

1 interfere with the plaintiff's right to full enjoyment and equal access to public
2 transportation, defendant Kim and the SFPD, Officer Does 26 to 50 inclusive, ordered
3 the plaintiff out of Kim's MUNI coach after he had lawfully boarded. The defendants
4 seized and handcuffed the plaintiff, physically removed him from the MUNI coach and
5 forced him to remain outside the coach in handcuffs for an appreciable period of time,
6 in full public view. During these two incidents, Kim and Officer Does 26 to 50,
7 inclusive, acted without probable cause, reasonable suspicion, or any legal justification
8 to assault, batter, detain and imprison the plaintiff. After Kim's coach had departed, the
9 plaintiff was released without charges being filed.

10 f. During most incidents within the past two years, Kim ordered the plaintiff off the bus
11 and took the bus out of service until the plaintiff complied or was forced to comply with
12 her order;

13 g. During one incident, January 9, 2007, Kim failed to stop her coach at a scheduled bus
14 stop when the plaintiff was the only passenger waiting to board.

15 25. Plaintiff is informed and believe and based upon that information and belief alleges that
16 at the time of the above-described events, and at all other pertinent times, the defendants had no
17 warrant for the arrest of the plaintiff or other facts or information that constituted probable cause that
18 plaintiff had ever committed or was about to commit a crime, infraction or MUNI rule violation, so as
19 to provide grounds for interference with his right to full and equal access to public transportation or to
20 support a lawful detention, a lawful physical restraint, a lawful imprisonment or a lawful removal from
21 the coach.

22 26. During the initial part of the above-described incident of November 11, 2007, the
23 plaintiff used a tape-recorder to create an audio record of the incident.

24 27. During the seizure and detention of the plaintiff on November 11, 2007, Officer Does
25 26 to 50, inclusive, took the above-described tape-recorder and the tape creating an audio record of the
26 November 11, 2007 incident.

27 28. At the time the tape-recorder was taken from the plaintiff, the plaintiff informed the
28 police that it contained a record of the incident with defendant Kim.

1 29. Upon the plaintiff's release at the scene following the November 11, 2007 incident, the
2 Officer Does 26 to 50, inclusive, returned the plaintiff's tape-recorder, but without justification or
3 probable cause refused to return the audio tape record to the plaintiff following the incident.

4 30. The plaintiff is informed and believe and based upon that information and belief alleges
5 that the Officer Does 26 to 50, inclusive, seized and refused to return the plaintiff's audio tape record
6 of the incident to control and destroy evidence of their own wrongdoing and the wrongdoing of
7 defendant Kim in order to limit the plaintiff's ability to seek legal redress for the defendants unlawful
8 and unconstitutional conduct.

9 31. Plaintiff is informed and believes and based upon that information and belief alleges
10 that at all relevant times, as a pattern and practice, the CCSF trained, permitted and authorized coach
11 operators, including Kim, to interfere with an individual's right to access public transportation based
12 on the individual's appearance alone without any further legal justification, reason or basis.

13 32. Plaintiff is informed and believes and based upon that information and belief alleges
14 that at all relevant times, as a pattern and practice, the CCSF failed to establish non-discriminatory
15 standards and criteria for coach operators to determine if there is legal cause to justify interference with
16 an individual's right to access public transportation.

17 33. Plaintiff is informed and believes and based upon that information and belief alleges
18 that at all relevant times, as a pattern and practice, MUNI permitted, trained, supported and encouraged
19 individual MUNI coach operators to establish and enforce their own standards and criteria to determine
20 whether there is legal cause to justify the interference with an individual's right to access her coach and
21 that these standards are variable and arbitrary.

22 34. Plaintiff is informed and believes and based upon that information and belief alleges
23 that at all relevant times, based upon her own access standards, defendant Kim arbitrarily denied and
24 continues to deny access to her MUNI coach if she believes that the passenger intends to board the bus
25 without a specific destination.

26 ///

27 ///

1 35. Plaintiff is informed and believes and based upon that information and belief alleges
2 that at all relevant times, as a pattern and practice, defendant Kim determines a passenger's eligibility
3 to ride in her coach based upon the passenger's race, communication skills, dress and physical
4 appearance.

5 36. Plaintiff is informed and believes and based upon that information and belief alleges
6 that at all relevant times, defendant Kim interfered with the plaintiff's access to her coach based upon
7 the plaintiff's African American race, poor communication skills, old and disheveled clothing and
8 unkempt appearance.

9 37. Plaintiff is informed and believes and based upon that information and belief alleges
10 that Kim's conduct was motivated by an animosity towards the mentally disabled and African
11 Americans.

12 38. Plaintiff is informed and believes and based upon that information and belief alleges
13 that at all relevant times, defendant Kim and Does 1 through 25, inclusive, were operating, managing,
14 supervising and directing Kim and establishing or failing to establish policies and procedures regarding
15 access to MUNI transportation services.

16 39. The plaintiff is informed and believes and based upon that information and belief
17 alleges that, at all relevant times, it was the official policy, pattern and practice of CCSF that, in the
18 event of a dispute between a MUNI operator and a passenger, the SFPD would offer close support and
19 assistance to MUNI operators.

20 40. The plaintiff is informed and believes and based upon that information and belief
21 alleges that it was the practice, procedure and policy of the CCSF for SFPD police officers to intervene
22 upon request in disputes between a MUNI operator and a passenger. These practices, procedures and
23 policies included, but were not limited to:

24 a. For SFPD officers to intervene on the side of MUNI operators against the passenger
25 regardless of the facts;

26 b. For SFPD officers to accept as fact the statement of the MUNI operator without
27 investigation and to thereafter arrest and imprison the passenger based upon the MUNI
28 operator's statement;

- c. For SFPD officers to be unreasonably and excessively aggressive with the use of force, arrest and imprisonment against passengers;
- d. For SFPD officers to unfairly and inaccurately report the incident so as to exonerate the MUNI operator and blame the passenger for any dispute.
- e. For SFPD officers to seize and suppress evidence regarding the incident that is perceived as possibly unfavorable to the MUNI operator and/or the CCSF;
- f. For SFPD officers to intentionally fail to interview witnesses perceived to be favorable to the passenger.

41. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times that the CCSF knew of the above-described practice and permitted, ratified and sanctioned the practice by failing to act to stop the practice and by not punishing those CCSF employees engaged in the practices.

42. Plaintiff is informed and believes and based upon that information and belief alleges that the conduct of the SFPD was motivated by the policy and practice to assist MUNI operators, as alleged above.

43. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, the defendants, and each of them, knew that disabled individuals rely upon MUNI's public transportation system.

44. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, the defendants, and each of them, knew that poor communication skills, old and disheveled clothing and an unkempt appearance are often manifestations of a mental disability.

45. Plaintiff is informed and believes and based upon that information and belief alleges that, at all relevant times, CCSF knew that the plaintiff was mentally disabled by virtue of a determination of disability by the CCSF Human Services Agency and payment of assistance to the plaintiff from the CCSF since 2003. CCSF was further aware of the plaintiff's disability when it accepted reimbursement of the money it paid to the plaintiff by the Social Security Administration based upon its June 30, 2007 retro-active determination of back to August 1, 2003.

1 46. Plaintiff is informed and believes and based upon that information and belief alleges
2 that defendant CCSF knew that Kim was interfering with the plaintiff's right to equal access to public
3 transportation because the plaintiff reported this fact to MUNI "Supervisors", including Does 1 to 25,
4 inclusive on May 29, 2004, May 30, 2004, December 29, 2006, January 9, 2007 and January 17, 2007.

5 47. Plaintiff is informed and believes and based upon that information and belief alleges
6 that it was the responsibility of the MUNI Supervisors including Does 1 to 25, inclusive, to investigate
7 and adjudicate disputes between passengers and coach operators.

8 48. Plaintiff is informed and believes and based upon that information and belief alleges
9 that, during the above-alleged incidents, MUNI Supervisors investigated the circumstances and
10 determined that Kim's interference with the plaintiff's right to transportation was appropriate and
11 ratified, approved and condoned Kim's conduct towards the plaintiff.

12 49. Plaintiff is informed and believes and based upon that information and belief alleges
13 that CCSF knew of Kim's above-described pattern and practice and permitted, ratified, encouraged,
14 condoned, supported and adopted Kim's actions to interfere with the plaintiff's right to access public
15 transportation.

16 50. Plaintiff is informed and believes and based upon that information and belief alleges
17 that defendant CCSF failed to establish a nondiscriminatory criteria, policy, practice and procedure for
18 mentally disabled access to MUNI transportation.

19 51. As a direct, proximate and legal result of the discriminatory conduct of the defendants,
20 to interfere with the plaintiff's access to public transportation and accommodations, the plaintiff was
21 caused to suffer a deprivation of the right to equal protection under the law and a deprivation of the
22 rights, privileges and immunities accorded to the plaintiff under the Fourteenth Amendment to the
23 United States Constitution.

24 52. As a direct, proximate and legal result of the defendants conduct to seize, restrain,
25 search and detain the plaintiff and to seize the plaintiff and his audio tape record during the incidents of
26 December 29, 2006 and November 27, 2007, respectively, the plaintiff was caused to suffer a
27 deprivation of the right to be free from search and seizure without probable cause under the Fourth
28 Amendment to the United States Constitution.

1 53. As a direct, proximate and legal result of the conduct of the defendants to interfere with
2 the plaintiff's right to equal access to public transportation on the basis of his race and mental
3 disability, the plaintiff was caused to suffer a loss of rights guaranteed to him under the Americans with
4 Disabilities Act of 1990, Title II, 42 U.S.C. §12131-12150 "Prohibition against Discrimination in
5 Public Transportation."

6 54. As a direct and proximate result of the acts and omissions of the defendants, and each of
7 them, over the past two years, the plaintiff was caused to suffer and continues to suffer, psychological
8 trauma and shock, humiliation and embarrassment, extreme mental and emotional distress.

9 55. As a further direct and proximate result of the acts and omissions of the defendants, and
10 each of them, over the past two years, the plaintiff was caused to suffer fear of harmful or offensive
11 physical contact and suffered such harmful and offensive physical contact resulting in personal injury.

12 56. As a further direct and proximate result of the acts and omissions of the defendants, and
13 each of them, over the past two years, the plaintiff employed and will continue to employ medical
14 providers in the future and caused the plaintiff to incur medical fees and expenses in the past and he
15 will continue to incur medical fees and expenses in the future.

16 57. As a further direct and proximate result of the acts and omissions of the defendants, and
17 each of them, over the past two years, the plaintiff was caused to suffer great inconvenience, loss of
18 time and loss of effort.

19 58. As a further direct and proximate result of the acts and omissions of the defendants, and
20 each of them, over the past two years, the plaintiff was caused to employ and continue to employ
21 attorneys and to incur fees and expenses in order to protect and vindicate his legal rights.

22 59. As a further direct and proximate result of the acts and omissions of the defendants, and
23 each of them, the plaintiff was caused to suffer the loss of an audio cassette with a record of the
24 incident of November 11, 2007.

25 60. As alleged above, defendants' persistent and intentional interference with the plaintiff's
26 right of access to public transportation over the past two years based solely upon his race and disability
27 was despicable and demonstrated an intent to injure the plaintiff such as to constitute malice and to
28 justify the award of exemplary and punitive damages against non-public entity defendants.

1 61. As alleged above, defendants' conduct over the past two years toward the plaintiff was
2 carried out with a willful and conscious disregard for the law and the rights of the plaintiff and of other
3 mentally disabled persons and was oppressive in that such conduct subjected the plaintiff to cruel and
4 unjust hardship in conscious disregard for the law and plaintiff's rights and justifies the award of
5 exemplary and punitive damages against non-public entities under California Civil Code §3294.

6 62. As a result of the defendants' intentional interference with the plaintiff's right to equal
7 access to MUNI transportation over the past two years, the plaintiff has continually been denied his
8 rights to full and equal enjoyment of public transportation. It has been and will continue to be a futile
9 gesture on the part of the plaintiff to attempt to gain access to coaches operated by defendant Kim or to
10 complain to the CCSF.

11 63. The acts and omissions of the defendants over the past two years, as alleged herein,
12 interfere with the plaintiff's right to access public transportation and fail to establish a
13 nondiscriminatory criteria, policy practice and procedure for providing access to MUNI transportation
14 to the mentally disabled. These acts and omissions are continuing on a day-to-day basis and have the
15 continuing effect of wrongfully and willfully excluding the plaintiff and other members of the public
16 who are mentally disabled from full and equal enjoyment and access to MUNI transportation as
17 hereinabove described. Such acts and omissions are the continuing cause of humiliation, severe mental
18 and emotional suffering, assault, battery and false imprisonment as the defendants continue to treat the
19 plaintiff as inferior and discriminate against him on the basis that he is mentally disabled and an
20 African American.

21 64. The plaintiff is unable so long as such acts and omissions of the defendants continue, to
22 achieve full and equal enjoyment and access to MUNI transportation services as described above. The
23 acts of the defendants, and each of them, have proximately caused and will continue to cause
24 irreparable injury to the plaintiff if not enjoined by this court.

25 65. Wherefore, the plaintiff asks this court to preliminarily and permanently:

- 26 a. Enjoin any continuing interference with the rights of the plaintiff and those similarly
27 situated to equal enjoyment and access to MUNI transportation services;
28

- b. Require the defendants to comply forthwith with the applicable constitutional and statutory requirements relating to full and equal enjoyment and access to public transportation as described above; and
- c. Require that CCSF adopt a rational, nondiscriminatory standards and criteria for determining when and if interference with a persons right to access public transportation is justified.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

SECOND CAUSE OF ACTION

(Americans with Disabilities Act, 42 U.S.C. §12101, et seq.)

As and for a Second Cause of Action, plaintiff alleges against the defendants, and each of them:

66. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

67. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12131, et seq. prohibits interference with an individuals right to full enjoyment and access to public transportation on the basis of race or disability.

68. As a direct, legal and proximate result of the conduct of the defendants, and each of them, the plaintiff was caused to suffer the loss of rights as guaranteed by Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12132, entitling the plaintiff to damages, punitive damages, injunctive relief and attorney fees.

69. As a direct, legal and proximate result of the conduct of the defendants, and each of them, over the past two years, the plaintiff was caused to suffer the damages as described above.

70. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

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THIRD CAUSE OF ACTION
(Unruh Civil Right Act, Cal. Civil Code §51)

As and for a Third Cause of Action, plaintiff alleges against the defendants, and each of them:

71. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

72. Plaintiff is informed and believes and based upon that information and belief alleges that MUNI is a "business establishment" as that term is used in California Civil Code §51(b).

73. As a direct, legal and proximate result of the above-alleged conduct of the defendants, and each of them, over the past two years, the plaintiff was deprived of full and equal accommodations, advantages, facilities, privileges and services provided by MUNI in violation of the Unruh Civil Rights Act, California Civil Code §51(b).

74. The conduct of the defendants, and each of them, as alleged herein constituted a violation of the right of an individual under the Americans with Disabilities Act of 1990 (California Civil Code §51(f)) in violation of California Civil Code §51(b).

75. By virtue of the defendants' conduct in denying, aiding and inciting the denial of the plaintiff's rights and discriminating in violation of California Civil Code §51, the plaintiff is entitled to treble the amount of actual damages, but in no case less than four thousand dollars (\$4,000) and attorney fees.

76. As a direct, legal and proximate result of the conduct of the defendants, and each of them, over the past two years, the plaintiff was caused to suffer the damages as described above.

77. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §52.1.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

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FOURTH CAUSE OF ACTION

(Cal. Civil Code §51.7, Freedom from Violence or Intimidation)

As and for a Fourth Cause of Action, plaintiff alleges against the defendants, and each of them:

78. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

79. At all relevant times, California Civil Code §51.7 was in full force and effect and established the plaintiff's right to be free from violence and intimidation by threat of violence against him because of his race and disability.

80. The conduct of the defendant defendants, and each of them, as alleged above over the past three years, violated the plaintiff's rights pursuant of California Civil Code §51.7(a).

81. By virtue of the defendants' conduct in denying, aiding and inciting the denial of the plaintiff's rights and discriminating in violation of California Civil Code §51.7, the plaintiff is entitled to punitive damages, a civil penalty of twenty-five thousand dollars (\$25,000) for each violation and attorney fees.

82. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §52.1.

83. As a direct, legal and proximate result of the conduct of the defendants, and each of them, the plaintiff was caused to suffer the damages as described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

FIFTH CAUSE OF ACTION

(Disabled Person Act, Cal. Civil Code §54, §54.1)
(Right to access public facilities and transportation)

As and for a Fifth Cause of Action, plaintiff alleges against the defendants, and each of them:

84. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 68, inclusive, as though set forth fully herein.

85. The Disabled Person Act, Civil Code §§ 54 and 54.1, establish the plaintiff's rights to full and free access to public facilities and public transportation, respectively.

86. The conduct of the defendants, and each of them, as alleged herein constituted a violation of the right of an individual under the Americans with Disabilities Act of 1990 in violation of California Civil Code §54(c) and §54.1(a)(3).

87. The above-alleged conduct of the defendants, and each of them, constituted an interference with, and denial of, the plaintiff's full and free use of streets and public transportation facilities in violation of California Civil Code §54.

88. The above-alleged conduct of the defendants, and each of them, constituted an interference with, and denial of, the plaintiff's full and equal access, as enjoyed by other members of the general public, to MUNI's accommodations, advantages, facilities and privileges of all common carriers and other public conveyances in violation of California Civil Code §54.1.

89. By virtue of the defendants' conduct in denying and interfering with admittance to and enjoyment of the public MUNI transportation facilities in violation of California Civil Code §54.1, the plaintiff is entitled to up to a maximum of three times the amount of his actual damages, but in no case less than one thousand dollars (\$1,000) and attorney fees.

90. As a direct, legal and proximate result of the conduct of the defendants, and each of them, the plaintiff was caused to suffer the damages as described above.

91. Wherefore, the plaintiff asks this court to preliminarily and permanently enjoin the defendants, and each of them, as requested above, pursuant to Civil Code §54.3.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

SIXTH CAUSE OF ACTION (Assault)

As and for a Sixth Cause of Action, plaintiff alleges against the defendants, and each of them:

92. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

93. On June 28, 2007, filed a "Claim against the City and County of San Francisco" and a First Amended Claim Against the City and County of San Francisco" and, in so doing, the plaintiff complied with the claim requirements of Government Code §§910, et seq. with regard to non-constitutional state law claims arising out of the December 29, 2007 incident, as alleged below (Causes

1 of Action Six through Eleven, herein); said First Amended Claim was rejected in a writing dated July
2 16, 2007.

3 94. Notwithstanding the fact that defendants, and each of them, knew that Kim had no
4 justification or legal right to order the plaintiff to leave her coach, on December 29, 2006 Kim and
5 Officer Does 26 to 50 inclusive, intentionally placed the plaintiff in fear of harmful and offensive
6 physical contact with his person for the purpose of unlawfully forcing him to leave the coach.

7 95. As a direct, legal and proximate result of the conduct of the defendants, and each of
8 them, the plaintiff was placed in apprehension of harmful and offensive physical contact with his
9 person.

10 96. The plaintiff did not consent to the above-described assault.

11 97. As a direct, legal and proximate result of the conduct of the defendants, occurring on
12 December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional
13 and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

14 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

15
16 **SEVENTH CAUSE OF ACTION**
17 **(Battery)**

18 As and for a Seventh Cause of Action, plaintiff alleges against the defendants, and each of
19 them:

20 98. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through
21 65, inclusive, as though set forth fully herein.

22 99. On December 29, 2006, Defendant Kim and Officer Does 26 to 50, inclusive, intended
23 to make harmful and offensive contact with the plaintiff for the purpose of unlawfully removing him
24 from defendant Kim's MUNI coach and interfering with his right to access public transportation.

25 100. The plaintiff did not consent to the above-described battery.

26 101. As a direct, legal and proximate result of the conduct of the defendants, and each of
27 them, the plaintiff suffered harmful and offensive physical contact with his person.
28

102. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

EIGHTH CAUSE OF ACTION
(False Imprisonment)

As and for a Eighth Cause of Action, plaintiff alleges against the defendants, and each of them:

103. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

104. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer a loss of personal freedom of movement, personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

NINTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

As and for a Ninth Cause of Action, plaintiff alleges against the defendants, and each of them:

105. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

106. In undertaking the actions alleged above, the defendants, and each of them, intended to humiliate, embarrass, make and example of, intimidate and otherwise cause the plaintiff severe mental and emotional distress.

107. In authorizing, permitting, ratifying, encouraging and condoning Kim's conduct, as alleged above, the City and County of San Francisco either intended to harm the plaintiff or acted with callous indifference to the harm caused to the plaintiff by violation of his rights by the defendants.

108. The above-described acts of the defendants, and each of them, were outrageous, intentional, unlawful, reckless, malicious and despicable and were committed for the purpose of causing the plaintiff to suffer pain, humiliation, mental anguish, and emotional and physical distress.

109. The conduct of each of these defendants in authorizing, confirming and ratifying these actions were done with the knowledge that the plaintiff's emotional and physical distress would thereby increase, and was committed with a wanton and reckless disregard for the consequences to the plaintiff and constituted malice and oppression. As a result therefore, the plaintiffs are entitled to an award of punitive damages against the non-public entity defendants pursuant to Civil Code §3294.

110. As a direct, legal and proximate result of the conduct of the defendants, occurring on December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

TENTH CAUSE OF ACTION (Negligence)

As and for a Tenth Cause of Action, plaintiff alleges against the defendants, and each of them:

111. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through 65, inclusive, as though set forth fully herein.

112. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times defendant Kim was unqualified, unskilled and unfit for employment as a MUNI coach operator.

113. Plaintiff is informed and believes and based upon that information and belief alleges that at all relevant times, defendant CCSF knew, or in the exercise of reasonable diligence should have known, that Kim was unqualified, unskilled and unfit for employment as a MUNI coach operator and that she and Officer Does 25 to 50, inclusive, were violating the rights of the plaintiff and other individuals similarly situated.

114. Notwithstanding its knowledge of the ongoing unlawful conduct by the defendants, and each of them, and of Kim's lack of fitness, skill and qualification for employment as an operator of a MUNI coach defendant CCSF negligently:

- a. Employed Kim;
- b. Failed to supervise, train or discipline Kim;
- c. Failed to act to stop Kim's ongoing unlawful conduct;

- 1 d. Failed to supervise, train or discipline officers of the San Francisco Police Department,
2 and in particular, Officer Does 26 to 50, inclusive;
- 3 e. Failed to investigate the complaints of the plaintiff and others regarding unlawful
4 discrimination by coach operators and the SFPD against certain classes of passengers
5 including, but not limited to the disabled, African Americans and, in particular, African
6 Americans with a mental disability;
- 7 f. Failed to establish lawful and rational policies and procedures to establish non-
8 discriminatory, non-arbitrary standards and criteria to be used by MUNI operators and
9 SFPD officers when disputes arise between members of the public and coach operators
10 over the issue of access to public transportation.

11 115. As a direct, legal and proximate result of the conduct of the defendants, occurring on
12 December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional
13 and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

14 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

15 **ELEVENTH CAUSE OF ACTION**
16 (Negligent Infliction of Emotional Distress)

17 As and for a Eleventh Cause of Action, plaintiff alleges against the defendants, and each of
18 them:

19 116. Plaintiff hereby refers to and incorporates herein by this reference paragraphs 1 through
20 65, 111 through 114, inclusive, as though set forth fully herein.

21 117. Defendants, and each of them, knew or, in the exercise of reasonable diligence, should
22 have known, that their failure to exercise due care in providing transportation to members of the public,
23 including the disabled and the plaintiff, would cause the plaintiff to suffer severe emotional distress.

24 118. As a direct, legal and proximate result of the conduct of the defendants, occurring
25 December 29, 2006, the plaintiff was caused to suffer personal injury, pain, suffering, severe emotional
26 and mental distress, humiliation, public ridicule, inconvenience and general damages described above.

27 WHEREFORE plaintiff prays for relief as is set forth in the Prayer for Relief, below.

1 PRAYER FOR RELIEF

2 WHEREFORE plaintiff, Ray Michael Miles, prays for judgment against defendants, and each
3 of them, as follows:

4 First Cause of Action: Civil Rights Violation 42 U.S.C. §1983

- 5 1. For non-economic damages;
- 6 2. For economic damages;
- 7 3. For exemplary and punitive damages against defendant Marie Kim, only;
- 8 4. For costs of suit herein and attorney fees (42 U.S.C. §1988);
- 9 5. For a preliminary and permanent injunction enjoining the defendants' interference with
10 plaintiff's access to public transportation and to establish lawful and rational standards and
11 criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just
12 cause to interfere with a passenger's right to full access to public transportation;
- 13 6. For pre-judgment interest in an amount to be calculated at a later date;
- 14 7. For other and further relief as the court may deem just and proper.

15

16 Second Cause of Action: Americans with Disabilities Act 42 U.S.C. §12101, et seq.

- 17 1. For non-economic damages;
- 18 2. For economic damages;
- 19 3. For exemplary and punitive damages against defendant Marie Kim, only;
- 20 4. For costs of suit herein and attorney fees pursuant to 29 U.S.C. §794(b);
- 21 5. For a preliminary and permanent injunction enjoining the defendants' interference with
22 plaintiff's access to public transportation and to establish lawful and rational standards and
23 criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just
24 cause to interfere with a passenger's right to full access to public transportation;
- 25 6. For pre-judgment interest in an amount to be calculated at a later date;
- 26 7. For other and further relief as the court may deem just and proper.

Third Cause of Action

1. For non-economic compensatory damages;
2. For economic damages;
3. Treble damages pursuant to Civil Code §52;
4. For costs of suit herein and attorney fees pursuant to Civil Code §52(a);
5. For exemplary and punitive damages against defendant Marie Kim, only;
6. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation;
7. For pre-judgment interest in an amount to be calculated at a later date;
8. For other and further relief as the court may deem just and proper.

Fourth Cause of Action

1. For non-economic damages;
2. For economic damages;
3. For a civil penalty in the amount of \$25,000 for each and every incident in which the defendants violated the plaintiff's rights under California Civil Code §51.7 pursuant to Civil Code §52(b)(2);
4. For costs of suit herein and attorney fees pursuant to Civil Code §52(b)(3);
5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation pursuant to Civil Code §52.1;
6. For exemplary and punitive damages against defendant Marie Kim, only pursuant to Civil Code §52(b)(1);
7. For pre-judgment interest in an amount to be calculated at a later date;

8. For other and further relief as the court may deem just and proper.

Fifth Cause of Action

1. For non-economic damages;

2. For economic damages;

3. For treble damages in no case less than \$1,000 for each and every incident in which the defendants violated the plaintiff's rights under Civil Code §54 and §54.1 pursuant to Civil Code §54.3;

4. For costs of suit herein and attorney fees pursuant to Civil Code §54.3;

5. For a preliminary and permanent injunction enjoining the defendants' interference with plaintiff's access to public transportation and to establish lawful and rational standards and criteria to determine if a MUNI coach operator or the San Francisco Police have legal and just cause to interfere with a passenger's right to full access to public transportation; pursuant to Civil Code §55;

6. For exemplary and punitive damages against defendant Marie Kim, only pursuant to Civil Code §3294;

7. For pre-judgment interest in an amount to be calculated at a later date;

8. For other and further relief as the court may deem just and proper.

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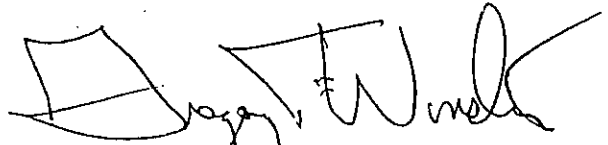
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Sixth through Eleventh Causes of Action

1. For non-economic damages;
2. For economic damages;
3. For costs of suit herein;
4. For exemplary and punitive damages against defendant Marie Kim pursuant to Civil Code §3294, only;
5. For pre-judgment interest in an amount to be calculated at a later date;
6. For other and further relief as the court may deem just and proper.

DATE: January 16, 2008

WINSLOW & HURTUBISE

A handwritten signature in black ink, appearing to read 'Gregory Winslow', is written over a horizontal line.

By Gregory Winslow
Attorneys for Plaintiffs

Alternative Dispute Resolution (ADR) Program Information Package

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 201.9(c))

**Superior Court of California
County of San Francisco**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- ***ADR can save time.*** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ***ADR can save money.*** Court costs, attorneys fees, and expert fees can be saved.
- ***ADR can be cooperative.*** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ***ADR can reduce stress.*** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- ***ADR encourages participation.*** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ***ADR is flexible.*** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ***ADR can be more satisfying.*** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 provides three different **voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfgov.org/courts. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Cost

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

Case No. _____

v. Plaintiff

**STIPULATION TO ALTERNATIVE
DISPUTE RESOLUTION**

Defendant

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|---|---|---|
| <input type="checkbox"/> Private Mediation | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration | | Judge _____ |
| <input type="checkbox"/> Non-binding judicial arbitration | | Judge _____ |
| <input type="checkbox"/> BASF Early Settlement Program | | |
| <input type="checkbox"/> Other ADR process (describe) _____ | | |

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____		
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		
		CASE NUMBER: _____

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____

Address of court (if different from the address above): _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify):

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

a. ☐ Insurance carrier, if any, for party filing this statement (name):b. Reservation of rights: ☐ Yes ☐ Noc. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 14a.b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):



Superior Court of California County of San Francisco

HON. DAVID BALLATI
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati
The Honorable Anne Bouliane
The Honorable Ellen Chaitin
The Honorable Robert L. Dondero
The Honorable Ernest H. Goldsmith
The Honorable Harold E. Kahn
The Honorable Patrick J. Mahoney
The Honorable Tomar Mason

The Honorable James J. McBride
The Honorable Kevin M. McCarthy
The Honorable John E. Munter
The Honorable Ronald Quidachay
The Honorable A. James Robertson, II
The Honorable John K. Stewart
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3876

EXHIBIT B

COPY

DENNIS J. HERRERA, State Bar #139669
City Attorney

JOANNE HOEPER, State Bar #114961
Chief Trial Deputy

SCOTT D. WIENER, State Bar #189266
Deputy City Attorney

Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4283
Facsimile: (415) 554-3837

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAY 29 2008

GORDON PARK-LI, Clerk
BY: MARY ANN MORAN
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

RAY M. MILES,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, MARIE KIM and DOES 1
TO 100, inclusive,

Defendants.

Case No. CGC-08-471145

**ANSWER OF DEFENDANT CITY
AND COUNTY OF SAN FRANCISCO
TO PLAINTIFF'S COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

Date Action Filed: January 16, 2008
Trial Date: None Set

1 Defendant City and County of San Francisco, hereby answer plaintiff's unverified complaint
2 as follows:

3 Pursuant to California Code of Civil Procedure Section 431.30, defendant denies each and
4 every allegation contained in plaintiff's complaint.

5 Defendant denies that plaintiff has been damaged in any sum or sums, or otherwise, or at all,
6 by reason of any act or omission of defendant.

7 AFFIRMATIVE DEFENSES

8 First Affirmative Defense

9 The complaint fails to state facts sufficient to constitute a cause of action against this
10 answering defendant.

11 Second Affirmative Defense

12 The City and County of San Francisco, a public entity, is immune from liability for
13 exemplary damages herein pursuant to the provisions of Section 818 of the California Government
14 Code.

15 Third Affirmative Defense

16 Plaintiff was comparatively negligent in and about the matters and activities alleged in the
17 complaint; said comparative negligence contributed to and was a proximate cause of plaintiff's
18 alleged injuries and damages, if any, or was the sole cause thereof; and if plaintiff is entitled to
19 recover damages against defendant by virtue of said complaint, defendant prays that the recovery be
20 diminished or extinguished by reason of the negligence of the plaintiff in proportion to the degree of
21 fault attributable to the plaintiff.

22 Fourth Affirmative Defense

23 Plaintiff assumed the risk of injury, and his claim is therefore barred.

24 Fifth Affirmative Defense

25 The employees involved at all times acted with probable cause and/or reasonable suspicion
26 and were therefore justified in detaining, arresting, restraining, and/or using force on Plaintiffs.
27
28

Sixth Affirmative Defense

The employees involved acted in accordance with and pursuant to §§834, 834a 835, 835a, 835, and 836.5 of the California Penal Code.

Seventh Affirmative Defense

The employees are entitled to absolute or qualified immunity.

Eighth Affirmative Defense

Plaintiff's complaint is barred by the doctrine of res judicata and/or collateral estoppel.

Ninth Affirmative Defense

Defendant is immune from liability because the involved employees were acting to execute or enforce the law.

Tenth Affirmative Defense

Defendant is immune from liability because the involved employees were instituting or prosecuting a judicial or administrative proceeding.

Eleventh Affirmative Defense

Any force that the involved employees used against Plaintiff was reasonable, privileged, and justified in light of the circumstances at issue and in light of plaintiff's own actions and conduct.

Twelfth Affirmative Defense

Plaintiff knowingly, voluntarily and/or willingly consented to the use of force upon his person.

Thirteenth Affirmative Defense

The City is immune for an injury to any prisoner, pursuant to Government Code section 844.6.

Thirteenth Affirmative Defense

No more force was used on plaintiff's persons than was necessary to effect detention, overcome any resistance thereto, prevent escape therefrom, prevent injury to the employees, and/or to facilitate and safeguard a valid police investigation and/or arrest.

Fourteenth Affirmative Defense

At all times mentioned in the complaint, the plaintiff acted in a careless, reckless, wanton and negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton and negligent conduct proximately contributed to the injuries and damages, if any, sustained or claimed by plaintiff; and as a consequence, plaintiffs' claim is barred.

Fifteenth Affirmative Defense

The employees, officials and agents of defendants were at all times material hereto acting with both subjective and objective good faith, such that any claim for relief that plaintiff may have is barred by law.

Sixteenth Affirmative Defense

The complaint is barred by the provisions and immunities of the California Tort Claims Act, without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1; 830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8. Under California law, these defendants are liable only pursuant to statute.

Seventeenth Affirmative Defense

Plaintiff failed to comply with the claims requirements with respect to suits against public entities, pursuant to Government Code Sections 900-915.4, 930-951 inclusive and other applicable statutes.

Eighteenth Affirmative Defense

Plaintiff failed to comply with the statute of limitations pursuant to California Code of Civil Procedure §340 and 342, and other applicable statutes.

Nineteenth Affirmative Defense

Plaintiff failed to exercise reasonable care and diligence to mitigate plaintiffs' alleged damages.

Twentieth Affirmative Defense

Defendant alleges that the fault of persons other than defendant contributed to and proximately caused any occurrence described in the Complaint, and that under the principles of *American Motorcycle Ass'n v. Superior Court* (1978) 20 Cal.3d 578, the percentage of such contribution should be established by special verdict or other procedure, and that defendant's ultimate liability be reduced to the extent of such contribution.

Twenty-First Affirmative Defense

In the event that defendant is found to be liable – which liability is specifically denied and stated merely for the purposes of this affirmative defense – such liability, if any, for non-economic damages shall be several, and not joint, pursuant to the California Fair Responsibility Act of 1986 (Proposition 51) as set forth in Section 1432 et seq of the California Civil Code. Defendant requests that the trier of fact be instructed that the amount of non-economic damages be allocated in direct proportion to the percentage of fault, if any, assessed against each person or entity to which the Act applies and that a separate judgment be rendered against each such person or entity in the amount of such non-economic damages attributable to that person or entity.

Twenty-Second Affirmative Defense

The provisions of the Tort Claims Act of the California Government Code as a measure of the duty of defendants.

Twenty-Third Affirmative Defense

Any injury to Plaintiff was caused by his own resistance and not by any actions of the officers.

Twenty-Fourth Affirmative Defense

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendant reserves the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

Twenty-Fifth Affirmative Defense

Plaintiff's federal and state disability access/discrimination claims are barred because:

1. The Complaint is barred in that the relief sought would require the City to alter fundamentally the City's services and programs.
2. The Complaint is barred in that the relief sought would place an undue financial and administrative burden or hardship on the City and would require unreasonable modifications to programs and services.
3. The Complaint is barred in the plaintiffs seek relief under the Americans with Disabilities Act allegedly because of acts or omissions of City employees who are not entities within the meaning of the Act.
4. The City has a comprehensive system or plan which is effectively providing appropriate services, programs and facilities to plaintiffs and any purported class.
5. To the extent that the Complaint alleges entitlement to services or programs that are not being provided, plaintiff has failed to demonstrate eligibility or entitlement to such programs or services.
6. This court lacks jurisdiction over the subject matter of this action, which is to compel a reallocation of taxpayer funds within a fixed and limited City budget to favor a few citizens over all other citizens on the basis of recommendations from indefinite and conflicting professional judgments or standards or lay opinions.
7. The relief requested in the Complaint is barred based upon the separation of powers doctrine.
8. The Complaint is barred because the City is not required to make structural changes in existing facilities where other methods are or would be effective to achieve compliance with applicable law.
9. The City does not have any policy, practice, procedure, regulation or intent to deny plaintiff any clearly established federal statutory or regulatory standard.

1 10. The Complaint is barred in that the relief sought would inappropriately mandate
2 the manner in which the City allocate public funds in relation to existing
3 programs and services.

4 11. The Complaint is barred in that the relief sought would inappropriately require the
5 City to allocate resources, a political judgment outside the purview of the court's
6 authority.

7 12. The complaint is barred because plaintiff inappropriately seeks to predicate his
8 claims on the City's allegedly improper allocation of public funds.

9 13. The complaint is barred because the City is not required to make modifications
10 that are structurally impracticable.

11 14. The complaint is barred because the City is not required to make the requested
12 modifications to historic structures.

13 15. The Complaint is barred because plaintiff has failed to request either reasonable
14 accommodation or auxiliary aid(s) as contemplated by all applicable law.

15 16. Plaintiff does not have a private cause of action to enforce regulations
16 promulgated under the Americans with Disabilities Act or the Rehabilitation Act.

1 WHEREFORE, defendant prays for judgment as follows:

2 1. That plaintiff takes nothing from Defendant by plaintiff's complaint.

3 2. That the Court dismiss plaintiff's complaint with prejudice and enter judgment in
4 favor of Defendant;

5 3. That the Court award Defendant its attorneys fees and costs of suit herein incurred;
6 and

7 4. That the Court award such additional relief as the Court deems just and proper.
8

9 Dated: May 28, 2008

10 DENNIS J. HERRERA

11 City Attorney

12 JOANNE HOEPER

13 Chief Trial Deputy

14 SCOTT D. WIENER

15 Deputy City Attorney

16 By: 

17 SCOTT D. WIENER

18 Attorneys for Defendant

19 CITY AND COUNTY OF SAN FRANCISCO
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MILES V. CCSF, ET AL. – SF SUPERIOR COURT NO. CGC-08-471145**PROOF OF SERVICE**

I, HELEN LAU, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 29, 2008, I served the attached:

**ANSWER OF DEFENDANT CITY AND COUNTY OF SAN FRANCISCO TO
PLAINTIFF'S COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Gregory F. Winslow, Esq.
Jerry A. Hurtubise, Esq.
Winslow & Hurtubise
230 Noe Street
San Francisco, CA 94114
Telephone: (415) 621-2131
Attorney for Plaintiff

and served the named document in the manner indicated below:

- ☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- ☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.
- ☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.
- ☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-3837 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.
- ☐ **BY ELECTRONIC MAIL:** I caused a copy of such document to be transmitted via electronic mail in portable document format ("PDF") Adobe Acrobat from the electronic address: helen.s.lau@sfgov.org.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 29, 2008, at San Francisco, California.


HELEN LAU

MILES V. CCSF, ET AL.

PROOF OF SERVICE

I, HELEN LAU, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 30, 2008, I served the attached:

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441
(FEDERAL QUESTION JURISDICTION AND SUPPLEMENTAL JURISDICTION) BY
DEFENDANT CITY AND COUNTY OF SAN FRANCISCO
(28 U.S.C. §§ 1441, 1446)**

DEMAND FOR JURY TRIAL

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Gregory F. Winslow, Esq.
Jerry A. Hurtubise, Esq.
Winslow & Hurtubise
230 Noe Street
San Francisco, CA 94114
Telephone: (415) 621-2131
Attorney for Plaintiff

and served the named document in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 30, 2008, at San Francisco, California.


HELEN LAU